

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERSON ARMANDO ROMERO SALAZAR,

Defendant.

Case No. 24-CR-125-JFH

OPINION AND ORDER

Before the Court is a Motion to Dismiss Indictment (“Motion”) filed by Defendant Gerson Armando Romero Salazar (“Defendant”). Dkt. No. 20. The United States of America (“Government”) filed a response in opposition to Defendant’s Motion.¹ Dkt. No. 27. After seeking leave from the Court, Defendant filed a reply. Dkt. No. 33. For the following reasons, Defendant’s Motion [Dkt. No. 20] is DENIED.

BACKGROUND

On April 16, 2024, Defendant was charged by indictment with one count of Alien Unlawfully in the United States in Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(5)(A) and 924(a)(8). Dkt. No. 2. This matter is currently set on the Court’s July 15, 2024 jury trial docket. Dkt. No. 24.

ANALYSIS

Defendant moves to dismiss the indictment [Dkt. No. 2] arguing that the alien in possession statute, 18 U.S.C. § 922(g)(5)(A), violates the Second Amendment in the wake of the United States Supreme Court’s decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111

¹ The Court granted the Government an extension of time to file its response. Dkt. No. 25.

(2022). Dkt. No. 20 at 1. Specifically, Defendant argues that § 922(g)(5)(A) is unconstitutional on its face because unlawful aliens are included within the “people” protected by the Second Amendment following the framework established in *Bruen*. *Id.* at 5-8.

In 2022, *Bruen* examined the Second Amendment’s constitutional protection of the right to keep and bear arms. 142 S. Ct. 2111. *Bruen* did not concern a criminal statute. Rather, it involved a challenge to federal firearms licensing regime, which required an individual applying for a license to carry a handgun outside his or her home to demonstrate “proper cause,” or a “special need for self-protection distinguishable from that of the general community.” *Id.* at 2123. The *Bruen* decision included a nuanced discussion of Second Amendment caselaw and announced a new two-prong test for evaluating the constitutionality of firearms regulation. *Id.* at 2126. Under the first prong, the Court must determine whether the plain text of the Second Amendment covers the conduct at issue. *Id.* at 2129, 2134–35. If so, the second prong requires the Government to establish that the regulation is consistent with the historical tradition of firearms regulation in the United States. *Bruen*, S. Ct. 2111, 2129–30.

In September of 2023, the Tenth Circuit issued an opinion addressing *Bruen*. *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023). In *Vincent*, the Tenth Circuit considered whether *Bruen* overruled its precedential decision in *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), wherein the Tenth Circuit upheld the constitutionality of 18 U.S.C. § 922(g)(1), prohibiting the possession of firearms by previously convicted felons. *Id.* at 1202. The Tenth Circuit held that because *Bruen* did not “indisputably and pellucidly abrogate[]” its ruling in *McCane*, it was obligated to apply its prior precedent. *Id.*

Like the felon in possession statute, the Tenth Circuit has upheld the constitutionality of the alien in possession statute. *United States v. Huitron-Guizar*, 678 F.3d 1164, 1167-1170 (10th

Cir. 2012) (upholding the constitutionality of 18 U.S.C. § 922(g)(5)(A)). Like *McCane*, *Huitron-Guizar* is not expressly overruled by *Bruen*. Therefore, the Court is bound to apply *Huitron-Guizar* and find that § 922(g)(5)(A) is not facially unconstitutional. See *United States v. Spedalieri*, 910 F.2d 707, 709 n.2 (10th Cir. 1990) (“A district court must follow the precedent of this circuit.”). For this reason, Defendant’s argument is foreclosed by *Huitron-Guizar* and *Vincent*.

CONCLUSION

IT IS THEREFORE ORDERED that Defendant Gerson Armando Romero Salazar’s Motion to Dismiss Indictment [Dkt. No. 20] is DENIED.

DATED this 11th of June 2024.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE